

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

FREDRICK L. SMITH

PLAINTIFF

VS.

CIVIL ACTION NO. 1:09CV122-DAS

**MICHAEL J. ASTRUE,
Commissioner of Social Security**

DEFENDANT

FINAL JUDGMENT

Pursuant to a hearing held before the undersigned United States Magistrate Judge, the court determined that the ALJ's decision is not supported by substantial evidence and that this case should be remanded to the Commissioner for additional proceedings. First, in his decision the ALJ invalidated the results of two consistent sets of IQ tests performed by Dr. Philip Drumheller. The court finds that the reasons cited by the ALJ in support of this determination are insufficient. Accordingly, on remand, the ALJ shall reconsider the claimant's IQ test results and, if necessary, give a more detailed explanation of the reason(s) supporting a finding invalidating said results, including sufficient citations to the record evidence. Second, at step five of the sequential evaluation process, the ALJ relied upon the vocational expert's testimony that the claimant could perform other jobs that existed in significant numbers in the national economy, including sorter and laundry folder. However, during cross-examination by the claimant's attorney, the vocational expert was unable to respond to counsel's questions regarding alleged conflicts between the DOT descriptions for these jobs and the claimant's RFC. The ALJ failed to address this issue in his opinion. Accordingly—if necessary—the ALJ shall also make a proper determination of whether there is any work the claimant is capable of performing considering his RFC. The ALJ should seek additional testimony from the vocational expert, being careful to identify and resolve any conflicts between the expert testimony and the DOT. Lastly, the

ALJ shall conduct any further proceedings not inconsistent with this order.

The parties, having consented to entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c), with any appeal to the Court of Appeals for the Fifth Circuit,

IT IS, THEREFORE, ORDERED AND ADJUDGED:

That this case is hereby **REMANDED** to the Commissioner for further proceedings as set out above.

THIS, 24th day of June, 2010.

/s/ David A. Sanders
U. S. MAGISTRATE JUDGE